



## New Jersey Department of Children and Families Policy Manual

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|-------------|------|--|-----------------|
| Manual:     | CP&P | Child Protection and Permanency                      | Effective Date: |
| Volume:     | IV   | Out of Home Placement                                |                 |
| Chapter:    | C    | Adoption   | 4-5-2010        |
| Subchapter: | 1    | General  |                 |
| Issuance:   | 600  | <b>Surrender of Custody and Consent for Adoption</b> |                 |

### Purpose

**4-5-2010**

This policy:

- Defines "Surrender of Custody and Consent for Adoption" and the two types of voluntary surrenders, general and identified; and
- Provides policy CP&P staff must follow when accepting either a general or identified surrender. See below for, "When and How to Process an Identified Surrender", for additional policy on identified surrenders which must be followed by the Adoption Worker.

### Authority

**4-5-2010**

- N.J.S.A. 30:4C-23, Voluntary Surrenders and Releases of Custody and Consents to Adoption
- N.J.S.A. 9, Children - Juvenile and Domestic Relations Courts
- N.J.A.C. 10:133J, Termination of Parental Rights, subsections 3.1 to 3.3

### Definitions

**4-5-2010**

**"Surrender of Custody and Consent for Adoption"** means the voluntary relinquishment of all parental rights by a birth parent, previous adoptive parent, or other person or agency authorized to exercise these rights by law, court order or otherwise, for the purposes of allowing a child to be adopted (N.J.S.A. 9:3-38). "Surrender" includes general and identified surrenders authorized by N.J.S.A. 9:3-41(d). When a parent surrenders his or her parental rights, CP&P accepts the responsibility of providing care and protection for the child.

**"General or Standard Surrender"** means a surrender that does not identify the prospective adoptive parent(s) for the child, allowing greater latitude in planning effectively for the child.

**"Identified Surrender"** means a surrender that identifies the prospective adoptive parent(s) for the child. Note: Special requirements must be met before an identified surrender may be taken by a CP&P Worker. See When and How to Process an Identified Surrender.

**"Legal Parent"** means any individual married, or joined by civil union or domestic partnership to the birth mother at the time of the child's conception and/or birth. Unless the legal parent plans to care for the child, CP&P must seek to obtain a surrender from the legal parent. If the legal parent cannot be located or refuses to sign a surrender, termination of parental rights is initiated

#### **Who May Relinquish Parental Rights**

**4-5-2010**

N.J.S.A. 30:4C-23 gives CP&P the right to accept the voluntary surrender of a child's custody and consent to his or her adoption from the parent, parents, guardians, or other persons or agencies having the right or authority to give such surrenders, releases or consents. Persons with these legal rights in CP&P cases are the birth mother and father, legal parent, legal guardian, or adoptive mother and father of a legally adopted child.

#### **Age and Validity of Surrenders and Consents**

**4-5-2010**

Pursuant to N.J.S.A. 30:4C-23, surrenders, releases, and consents, when properly acknowledged before a person authorized to take acknowledgements of proof in the State of New Jersey, are valid and binding irrespective of the age of the person relinquishing his or her parental rights.

#### **When May a Surrender Be Revoked**

**4-5-2010**

Surrenders, releases, and consents to adoption are irrevocable except at the discretion of the Division of Child Protection and Permanency or by order of a court of competent jurisdiction.

#### **Where May Surrenders Be Taken and by Whom**

**4-5-2010**

- Surrenders of custody may only be taken by designated adoption staff. They may be taken at any location (e.g., Local Office, hospital, prison/jail) with the appropriate witnesses present, which must include a notary.
- For cases in litigation, surrenders must be taken under court jurisdiction and in court, unless the court agrees to another location with the appropriate witnesses present, including a notary.

Note: In rare instances, a parent may contact the Division and request adoption planning for his or her child. In these cases, after consultation with the Deputy Attorney General (DAG), surrenders may be taken without court involvement.

### **How May a Surrender Be Taken**

**4-5-2010**

Standard and identified surrenders can be accepted:

- In written format with the appropriate witnesses present, including a notary, or
- Verbally under oath on the record in a court of law for a case in litigation.

### **CPS or TPR Litigation Restricts Taking a Surrender**

**4-5-2010**

Consult the DAG assigned to the Local Office before accepting a voluntary surrender of custody and consent for adoption, if child protective services (CPS) or termination of parental rights (TPR ) litigation has commenced.

The DAG advises the parent's attorney, the law guardian, and the court of the parent's request and the Division's contemplated action. If agreed upon, an adoption staff representative takes the voluntary surrender from the parent:

- In writing outside of the court proceedings in accordance with the DAG's instructions, and the DAG presents it to the court; or
- Verbally under oath on the record during a court proceeding. (This would be the more typical protocol when a case is in litigation.)

### **Legal Documents that Transfer Custody of a Child**

**4-5-2010**

CP&P Form [14-86](#), Surrender of Custody and Consent for Adoption, CP&P-Form [14-86a](#), Affidavit of Surrendering Parent, and CP&P Form [14-86f](#), Identified Surrender Affidavit, found in NJS, are the legal documents, signed voluntarily by a parent, which are used to transfer custody of the child from the parent to CP&P with the intent that the child be placed for adoption. Each parent must sign an individual surrender form for each child for whom he or she chooses to relinquish custody and place for adoption.

See subsequent sections that follow, and the CP&P Forms Manual (NJ SPIRIT Legal Forms) for more information on completing these forms. Access the forms in the NJS application through Create>Casework>Court/Legal>Options Drop-down. See below for additional affidavits that may be needed to free a child for adoption.

Note: Use the second page of CP&P Form [14-86](#) when CP&P transfers custody of a child to another agency.

### **Process of Relinquishing Parental Rights**

**4-5-2010**

The process of voluntary relinquishment of parental rights supports parents being fully informed of their rights and alternatives, and protects against coercion. The Adoption Worker and his or her Supervisor complete all surrenders (general or identified), accompanying affidavits, and documents in a manner which is sensitive to the parent who may be experiencing feelings of guilt, shame, sadness, grief or loss at being unable to care for his or her child. When taking a voluntary surrender of custody and consent to adoption, the Worker and Supervisor:

- Pursuant to N.J.S.A. 9:3-41(c) and (e), delay taking the surrender for 72 hours after the birth of the infant. The infant must be at least 72 hours old before the mother signs the surrender.
- At a minimum, offer three face-to-face counseling sessions to the parent, before the parent signs a surrender, to assist the parent in evaluating his/her plans for the child. The parent may choose to waive his/her right to the counseling sessions.

As part of the surrender package, the parent signs a statement acknowledging the receipt of the three counseling sessions or waiving his or her right to receive counseling. See CP&P Form [14-86g](#), Acknowledgement of Counseling Received. See the CP&P Forms Manual (NJ SPIRIT Legal Forms) for more information on completing this form. Access the form in the NJS application through Create>Casework>Court/Legal>Options Drop-down.

In litigation cases where the court record indicates that casework with the family has addressed alternatives to termination of parental rights, further counseling may not be required.

- Counsel the parent and explain fully the meaning of signing the surrender document. Explore and explain in detail the meaning, significance, finality and ramifications of surrendering parental rights in accordance with N.J.A.C. 10:121A-5.4.
- Advise the parent that he or she may stop the surrender of parental rights at any point in the procedure.
- Assure that the parent appears legally competent to execute the surrender and fully comprehends the meaning, finality, and consequences of surrendering parental rights in accordance with N.J.A.C. 10:121A-5.4. If this does not appear to be the case, the Division is not authorized to accept a surrender of parental rights from a parent as its validity may be questioned at a later date.
  - Consult the DAG if, through questioning or observations at the signing, or a review of evaluations completed by professionals (e.g., psychological, substance abuse), there are indications that the parent has a diminished

capacity to understand the meaning, finality and consequences of surrendering parental rights because he or she:

- May be under the influence of medication, drugs and/or alcohol;
  - Has a diagnosed mental illness or psychiatric or psychological disorder; or
  - Is developmentally disabled.
  - An assessment by the appropriate professional (e.g., a psychologist, psychiatrist) should be completed, whenever necessary, to determine the parent's competency to understand and sign a surrender of parental rights.
- Read the surrender documents aloud, explaining each point in detail regarding the meaning, consequences and finality of surrendering parental rights, giving the parent the opportunity to ask questions or raise issues. Ask the parent to explain, in his or her own words, the meaning, finality and consequences of surrendering parental rights.
  - Make the documents related to surrendering parental rights available in a language which the parent understands, or provide competent verbal or sign translation of the surrender of parental rights procedure into a language which the parent understands.
  - Attempt to determine, through questions and observations, any duress, undue pressure or coercion which has been brought to bear on the parent in order to induce him or her to surrender parental rights. Stop the proceedings if any duress, pressure or coercion is occurring or has occurred. A surrender may not be taken under those circumstances. Counsel the parent regarding services to help the parent cope with the duress.
  - Allow the parent to have a friend, relative or representative present at the surrender of parental rights procedure, unless the person is disruptive to the procedure or a source of duress on the parent. The friend, relative or representative signs an affidavit regarding his or her role and observations during the surrender of parental rights but shall not be the witness to the procedure.
  - Give the parent a copy of all documents signed by the parent and those documents which were read to the parent during the surrender of parental rights procedure.
  - Advise the parent of the Division's Adoption Registry and of any laws or procedures regarding the confidentiality of records related to the surrender of parental rights or adoption including open adoptions.

## **Parent May Have Assistance**

**4-5-2010**

If the surrendering parent cannot read or write, he or she may select someone whom he or she trusts to accompany him or her to the surrender proceedings. This person completes:

- The forms for the parent, and
- An affidavit indicating his or her relationship to the surrendering parent, and that he or she accurately read the forms to the parent and accurately transcribed the answers.

The Adoption Worker may perform this function with the parent's agreement.

## **Surrender Is Witnessed and Notarized**

**4-5-2010**

The surrender must be signed and notarized in the presence of at least two CP&P representatives who are at a supervisory level. One of these staff must not be assigned to the case. These staff serve as witnesses and determine, to the best of their ability, that:

- The parent understands the meaning, consequences and finality of surrendering parental rights,
- The parent is (mentally) competent to surrender parental rights, and
- The Adoption Worker attempted to determine and mitigate any duress on the parent and that the parent is surrendering parental rights of his or her own free will.

After discussing the surrender with the parent, if the witnesses have no doubts about the competency of the parent's understanding of the surrender or his or her willingness to sign it, they sign the affidavits, CP&P Form [14-86a](#), Affidavit of Surrendering Parent, CP&P Form [14-86b](#), Affidavit of Local Office Manager, and, if appropriate, CP&P Form [14-86d](#), Affidavit of Local Office Supervisor. They sign the affidavits regarding their role and observations in the surrender proceedings. If necessary, these individuals are available to testify as witnesses in court.

See the CP&P Forms Manual (NJ SPIRIT Legal Forms) for more information on completing these forms. Access the forms in the NJS application through Create>Casework>Court/Legal>Options Drop-down.

## **Surrender and Parent's Affidavit Must Be Consistent**

**4-5-2010**

The surrender, CP&P Form [14-86](#) or CP&P Form [14-86\(S\)](#), may be considered invalid if there are any deletions or inconsistencies between it and CP&P Form [14-86a](#), Affidavit of Surrendering Parent.

- If a typographical error is discovered on any of the surrender documents and re-typing is not feasible, the parent may correct the error. All corrected errors must be initialed by the parent.
- The surrendering parent must answer each question or statement. The Worker reads the affidavit aloud to the surrendering parent, who reads along from another copy. The Worker interviews the parent, and makes entries to reflect the parent's responses into the electronic template in the NJS application for the CP&P Form [14-86a](#). After discussing the affidavit with the parent and having no doubts about his or her competency to understand the surrender or his or her willingness to sign the affidavit, the parent signs the form.

See the CP&P Forms Manual (NJ SPIRIT Legal Forms) for more information on completing this form. Access the form in the NJS application through Create>Casework>Court/Legal>Options Drop-down.

## **Obtain Other Legal Documents**

**4-5-2010**

The Worker obtains, to the extent possible and necessary, each birth certificate; marriage, civil union or domestic partnership certificate; divorce decree, or dissolution of a civil union or domestic partnership decree; death certificate; and all affidavits and documents related to the surrender of parental rights.

## **Adoption Registry and Records**

**12-27-2011**

Advise the parent about the Division's Adoption Registry and any laws or procedures regarding the confidentiality of records related to the surrender of parental rights or adoption. See [CP&P-IV-C-1-900](#), Adoption Registry Services to Adoptees and Their Families, and CP&P Form [14-205A](#) and CP&P Form [14-205B](#), Adoption Registry Cover Letter and Application, and Adoption Registry Release (Birth Family), and their instructions located in the Forms Manual .

## **Actions/Documents Freeing a Child for Adoption 4-5-2010**

A child may be freed for adoption, when he or she cannot or should not be returned to his or her parent(s), on the basis of either:

- The birth mother's surrender, and one of the following:
  - A surrender signed by the birth father and/or the other legal parent,

- An "Affidavit of Inquiry" completed by the Adoption Worker regarding the birth father who denied paternity,
  - The birth father's failure to respond after adequate proof of notice of the Division's plan to place the child for adoption, or
  - An "Affidavit Denying Paternity" signed by the putative father; or
- With the approval of the DAG, having obtained, or initiating through the court, the involuntary termination of parental rights (TPR).

See Surrenders and Additional Requirements For Parents, regarding the "Affidavit of Inquiry" and the "Affidavit Denying Paternity."

### **DAG Review and Legal Disposition of Cases                      4-5-2010**

Forward each case to the DAG assigned to the Local Office. He or she:

- Reviews the case and determines its legal disposition.
- Indicates if any legal requirements are not satisfied and outlines changes or additional data which is required.
- If all the documents are in order, sends the authorization of clearance for surrenders to the Adoption Worker and his or her Supervisor. See the CP&P Form [14-90](#), DAG Clearance Form, in the CP&P Forms Manual (NJ SPIRIT Legal Forms). Access the form in the NJS application through Create>Casework>Court/Legal>Options Drop-down.

### **Document Surrender Process    4-5-2010**

As soon as the surrender of parental rights and consent for adoption procedure is completed, record all information in the child's electronic case record in NJS including:

- The names and titles of all persons present;
- Recapitulation of all questions, comments, and answers that were made and by whom (e.g., parent, anyone assisting the parent, Worker, witnesses);
- A description of the surrendering parent's attitude and emotions during the process; and
- Any other information or observations that convey the atmosphere in which the surrenders were taken.

### **Prior to TPR, Offer the Opportunity for a Voluntary Surrender    4-5-2010**



If a decision is made to pursue TPR in accordance with N.J.S.A. 30:4C-15 and 15.1, offer the parent an opportunity to surrender his or her parental rights pursuant to N.J.S.A. 30:4C-23.

### **Inform Parent of Legal Rights if CP&P Pursues TPR      4-5-2010**

When a parent is offered an opportunity to surrender parental rights, advise the parent that if the Division pursues TPR, the parent has a right to a trial, to be represented by counsel at the TPR court proceedings, and, if the parent cannot afford an attorney, to ask the court to assign an attorney to represent him or her (N.J.A.C. 10:133J-2.1 (c) and (d)).

### **Relevant NJS Forms and Windows      4-5-2010**

- Adoption Planning Window
- Case Plan Window
- Contact/Activity Notes Window
- Legal Action Window
- Legal Status Window
- Person Management Window
- Placement Window
- Search for Missing Persons Window
- Affidavit of Inquiry
- CP&P Form [14-86](#), Surrender of Custody and Consent for Adoption (or Spanish version, CP&P Form [4-86\(S\)](#))
- CP&P Form [14-86a](#), Affidavit of Surrendering Parent
- CP&P Form [14-86b](#), Affidavit of Local Office Manager
- CP&P Form [14-86d](#), Affidavit of Local Office Supervisor
- CP&P Form [14-86e](#), Affidavit of Parent of Surrendering Parent Under 18 - Form E: Form
- CP&P Form [14-86f](#), Identified Surrender Affidavit
- CP&P Form [14-86g](#), Acknowledgement of Counseling Received
- CP&P Form [14-88](#), Affidavit Denying Paternity
- CP&P Form [14-89](#), Affidavit of Mother
- CP&P Form [14-90](#), DAG Clearance Form
- CP&P Form [26-52](#), Contact Sheet

### **When and How to Process an Identified Surrender**

#### **Purpose      4-5-2010**

This section outlines when CP&P may accept an identified surrender, and specific policy the Adoption Worker must follow when processing the surrender.

#### **Authority      4-5-2010**

- N.J.S.A. 30:4C-23, Voluntary Surrenders and Releases of Custody and Consents to Adoption
- N.J.S.A. 9, Children - Juvenile and Domestic Relations Courts

### **Identified Surrender Used for Child in CP&P Custody      4-5-2010**

There are situations in which birth parents will only execute a voluntary surrender if assurances can be given that their child will be adopted by a specific individual. New Jersey statute allows authorized adoption agencies to use an "Identified Surrender."

CP&P staff only use an identified surrender for a child already in CP&P custody.

If a parent requests adoption planning for a newborn or child not in CP&P custody, and identifies a potential adoptive parent, this is a private adoption placement and CP&P does not become involved.

### **Cases in which Identified Surrenders Are Taken      4-5-2010**

Identified Surrenders are taken only in cases where the Adoption Worker and Supervisor have determined that:

- The prospective adoptive parents are committed to move forward quickly once the child is legally free to be adopted;
- The adoption by the identified adoptive family is in the child's best interest;
- The termination of parental rights for other named parent(s) will be accomplished quickly:
  - The other parent is also signing a Surrender of Custody or in the case of a putative father, a Denial of Paternity,
  - The other parent is missing and a legal search has been completed, or
  - Termination of parental rights (guardianship) litigation is underway and expected to be brief; and
- The prospective adoptive parents have met the standards as a licensed resource home (see below).

### **Prospective Home Must Be Licensed or Evaluated      4-5-2010**

In New Jersey an adoption placement can only be made when a home has been studied and approved by a licensed adoption agency. See N.J.A.C. 10:121A. All

children placed for adoption through CP&P must be placed with families who have been licensed under Resource Family Regulations. See N.J.A.C. 10:122C.

All of the following must occur before an Identified Surrender can be accepted, if the home of the prospective adoptive parent(s) (kinship home) has not yet been licensed:

- The child is placed as a foster child;
- The home meets standards for presumptive eligibility in kinship placement;
- An evaluation is conducted which includes:
  - An on-site home assessment to assure child safety and determine the likelihood that licensing standards can be met,
  - Criminal history checks, including Promis/Gavel, local police, and Criminal History Record Information (CHRI) checks, and fingerprinting of all adult family and household members,
  - A full record review, including NJS, and Child Abuse and Neglect Record Information (CARI) checks, and
  - Approval of all necessary waivers; and
- The case is conferenced with the DAG.

#### **Procedures and Forms for Identified Surrender      4-5-2010**

In executing an Identified Surrender follow the same policies, procedures and forms as in a "Standard" surrender of custody, which are found above, Surrender of Custody and Consent for Adoption. In addition:

- In question #16 of CP&P Form [14-86a](#), Affidavit of Surrendering Parent, indicate clearly that an Identified Surrender Affidavit is attached. Check the statement: "The attached Identified Surrender Affidavit is incorporated into and made a full part of this Affidavit."
- After CP&P Form [14-86a](#) is completed, have the parent sign CP&P Form [14-86f](#), Identified Surrender Affidavit, which specifies that this is an Identified Surrender. Have him or her name the specific individual(s) who is to adopt the child. See the CP&P Forms Manual (NJ SPIRIT Legal Forms) for more information on completing the forms. Access the forms in the NJS application through Create>Casework>Court/Legal>Options Drop-down.

- The parent may designate the current caregiver, if the foster parent is adopting, but the name is unknown to the parent and both parties agree that confidentiality will be maintained.
  - CP&P Form [14-86f](#) states that the parent retains his/her parental rights, if for any reason, the adoption by the named individual(s) does not occur.
  - Have the CP&P Form [14-86f](#) notarized.
- State in the surrender dictation that the parent signed an Identified Surrender and list the individual(s) who is to adopt the child.

### **If the Child Is Not Adopted by Designated Adoptive Parent      4-5-2010**

If an identified surrender is accepted, but the child is not adopted by the designated individual(s), CP&P must reinitiate litigation in order to terminate parental rights.

### **Relevant NJS Forms and Windows      4-5-2010**

- Adoption Planning Window
- Case Plan Window
- Contact/Activity Notes Window
- Legal Action Window
- Legal Status Window
- Person Management Window
- Placement Window
- Search for Missing Persons Window
- Affidavit of Inquiry
- CP&P Form [14-86](#), Surrender of Custody and Consent for Adoption
- CP&P Form [14-86a](#), Affidavit of Surrendering Parent
- CP&P Form [14-86b](#), Affidavit of Local Office Manager
- CP&P Form [14-86d](#), Affidavit of Local Office Supervisor
- CP&P Form [14-86e](#), Affidavit of Parent of Surrendering Parent Under 18 - Form E: Form
- CP&P Form [14-86f](#), Identified Surrender Affidavit
- CP&P Form [14-86g](#), Acknowledgement of Counseling Received
- CP&P Form [14-88](#), Affidavit Denying Paternity
- CP&P Form [14-89](#), Affidavit of Mother
- CP&P Form [14-90](#), DAG Clearance Form
- CP&P Form [26-52](#), Contact Sheet

### **Surrenders and Additional Requirements for Parents**

#### **Purpose      4-5-2010**

Judicial decisions and New Jersey Statutes (N.J.S.A. 9:3-38f, 9:3-45, 46) outline the rights of birth parents and legal parents in relation to the adoption of a child. The Division is obligated to protect those rights by making and documenting reasonable efforts to encourage positive parent-child relationships and to support parental involvement in making permanent plans for the child. This section presents policies that must be followed by Adoption Workers regarding parents (e.g., missing parents, birth mother, birth father, institutionalized parent) when processing surrenders, including obtaining required affidavits.

## **Authority**

**4-5-2010**

- N.J.S.A. 30:4C-23, Voluntary Surrenders and Releases of Custody and Consents to Adoption
- N.J.S.A. 9, Children - Juvenile and Domestic Relations Courts

## **Searching for a Missing Parent**

**4-5-2010**

In situations where CP&P does not know the whereabouts of a parent (e.g., birth mother, birth/legal father, other parent), conduct a diligent search to locate the missing parent. See [CP&P-III-C-4-100](#), Identification and Search for Parents and Relatives, for detailed policies and procedures regarding searches.

A search is only valid for six months. If the parent continues to be absent, initiate a new search.

## **Affidavit of Inquiry**

**4-5-2010**

If a missing parent is not located, complete an "Affidavit of Inquiry," to document to the court that CP&P made a good faith effort to notify the parent about the plans for the child (see III D, Rule 5:12-2(b)). See NJS Legal Forms.

If a parent is located, do not complete an affidavit. See below for processing if a missing birth or legal father/parent is located.

## **The Birth Mother**

**4-5-2010**

- If the birth mother is a minor, encourage the mother to discuss her plans for the child with her parents or legal guardians. Have the parents or legal guardians witness the signing of the surrender and document their presence by signing CP&P Form [14-86e](#), Affidavit of Parent of Surrendering Parent Under 18 - Form E: Form. A surrender signed by a mother of any age is valid, even if her parents or legal guardians do not agree with the plan or witness the signing of the surrender. See the CP&P Forms Manual (NJ SPIRIT Legal Forms) for more information on completing the form. Access the form in the NJS application through Create>Casework>Court/Legal>Options Drop-down.

See Age and Validity of Surrenders and Consents.

- If the birth mother cannot be located within six months (N.J.S.A. 30:4C-15.1) or refuses to sign a surrender, initiate termination of parental rights litigation.

#### **Obtain Information about Other Birth/Legal Parents                      4-5-2010**

- Encourage the birth mother to reveal the identity and whereabouts of the birth father, and/or other legal parent, to enable CP&P to notify him or her of the plans for the child, thereby providing him or her with the opportunity to participate in, or object to, these plans. If more than one identified person could possibly be the child's biological father, all names must be investigated and paternity tests completed (if possible and as appropriate).

Obtain information about the birth father, if possible. Any information that does not reveal his identity will be available to the adoptee, if the adult adoptee later returns to CP&P seeking this information.

- If the birth mother is unable or refuses to identify the birth father, ask her to sign CP&P Form [14-89](#), Affidavit of Mother. See the CP&P Forms Manual (NJ SPIRIT Legal Forms) for more information on completing the form. Access the form in the NJS application through Create>Casework>Court/Legal>Options Drop-down.
- The court, in rare instances, may require the mother to appear in court for the final hearing. If the court is unable to identify the other parent from the information before it, service on the missing parent, and the participation of that parent, is waived.

#### **If a Missing Father/Parent Is Located                                      4-5-2010**

If the missing father's/parent's address is found during the inquiry process, notify the father/parent of the other parent's plan to surrender the child, and ask if he or she can assume permanent custody of the child.

- When an individual named as the possible birth father is located, make contact in-person, whenever possible.
- If personal contact is not possible, notify the birth father by registered and certified mail.

#### **If Paternity Is Acknowledged    4-5-2010**

If the birth father acknowledges paternity and has no objection to surrendering the child for adoption, ask him to sign a surrender.

## **If Paternity Is Denied**

**4-5-2010**

- If the birth father denies paternity, ask him to sign CP&P Form [14-88](#), Affidavit Denying Paternity. See the CP&P Forms Manual (NJ SPIRIT Legal Forms) for more information on completing the form. Access the form in the NJS application through Create>Casework>Court/Legal>Options Drop-down
- If the person named as the birth father denies paternity or any interest in the child, and refuses to sign an affidavit, send a follow-up letter to him, to verify the conversation with him and affirm that CP&P will place the child for adoption unless he notifies CP&P of his objections, within 20 days, if residing within New Jersey, or 35 days, if outside New Jersey, in accordance with N.J.S.A. 9:3-45.
  - Send two copies of the follow-up letter to the birth father; one through regular mail and the other through certified mail with a return receipt requested. Both copies must include a self-addressed, stamped or metered envelope.
  - If the receipt is signed by the named father within 20 days and he does not object, the signed receipt is evidence that he had notice of CP&P action.
  - Retain a hard copy of all correspondence in the case record.
- A legal father may not sign a denial of paternity.
- It is not sufficient for the Worker to simply state in an affidavit that he or she talked to a legal or birth parent and that the parent denied paternity or interest in the child. Such an affidavit is hearsay and unacceptable for legal clearance.

## **If Birth Parent Refuses to Surrender, Confirm Biological Connection 4-5-2010**

If a named birth parent registers an objection to surrendering the child for adoption, his biological connection to the child must be confirmed with DNA testing.

Note: A legal parent's rights may be nullified if another man has been adjudicated as the birth father following paternity testing. The DAG must be consulted for clarification in such a situation.

## **If the Confirmed Birth Father Presents a Plan for the Child 4-5-2010**

- If the named birth father is confirmed as the birth father after paternity testing and presents a plan to care for the child, assess the plan's suitability and either work with him toward the return of the child, or initiate termination proceedings.

- If both the confirmed birth father and other legal parent present a plan for the child:
  - Consult the DAG assigned to the Local Office, then
  - Determine with the parents an appropriate plan for the child based on the individual case circumstances.

### **If Missing Parent's Address Found After Child Is Placed 4-5-2010**

If a parent is located after the child is placed out of home, the Worker assesses his or her suitability to parent the child unless the court has determined that reasonable efforts to reunify the child with a parent are not required.

### **Death of Parent 4-5-2010**

If the birth or legal parent is deceased, obtain verification of the death and apply for government benefits on behalf of the child. See [CP&P-IX-F-1-250](#), Federal Benefits.

### **If the Parent Is Institutionalized 4-5-2010**

Contact the birth or legal parent who is a resident in a prison, long-term mental health facility, or institution for the developmentally disabled:

- Assess the parent's ability to care for the child and whether it is likely to change in the foreseeable future. Consider his or her proposed discharge plan.
- Secure an affidavit from the treating professional (psychiatrist, psychologist, social worker) who is knowledgeable about the parent. The affidavit must include:
  - A diagnosis,
  - A prognosis,
  - Comments on the parent's understanding of his or her consent, and
  - Comments on the parent's ability to provide for the child's care in the foreseeable future.

If the parent:

- Agrees to adoption planning, ask him or her to sign a surrender.
- Will not sign the surrender or is "incompetent" due to mental deficiencies to understand the process, initiate termination proceedings. A guardian ad litem is appointed for an "incompetent parent."

### **Parent Located Out-of-State 4-5-2010**

See [CP&P-VIII-D-2-700](#), Determination of Willingness to Surrender.



## **Relevant NJS Forms and Windows**

**4-5-2010**

- Adoption Planning Window
- Case Plan Window
- Contact/Activity Notes Window
- Legal Action Window
- Legal Status Window
- Person Management Window
- Placement Window
- Search for Missing Persons Window
- Affidavit of Inquiry
- CP&P Form [14-86](#), Surrender of Custody and Consent for Adoption
- CP&P Form [14-86a](#), Affidavit of Surrendering Parent
- CP&P Form [14-86e](#), Affidavit of Parent of Surrendering Parent Under 18 - Form E: Form
- CP&P Form [14-86f](#), Identified Surrender Affidavit
- CP&P Form [14-88](#), Affidavit Denying Paternity
- CP&P Form [14-89](#), Affidavit of Mother
- CP&P Form [26-52](#), Contact Sheet
- CP&P Form [26-84](#), Twenty Day Letter
- CP&P Form [26-85](#), Post Master Letter
- CP&P Form [26-86](#), Search Letter

## **Surrender Executed in Other States or Other Countries**

### **Purpose**

**4-5-2010**

This section presents CP&P policy regarding surrenders executed in other states or foreign countries.

### **Authority**

**4-5-2010**

- N.J.S.A. 30:4C-23, Voluntary Surrenders and Releases of Custody and Consents to Adoption
- N.J.A.C. 9, Children - Juvenile and Domestic Relations Courts

## **Full Faith/Credit for Surrenders in Other States/Countries**

**4-5-2010**

Any approved agency may accept custody of a child by an appropriately executed surrender from:

- A parent or guardian of a child;

- Another approved agency; or
- Any agency responsible for the care and protection of children approved by any other state, by the United States, or by any foreign country, which has the authority to place the child for adoption.

Pursuant to N.J.S.A. 9:3-41, the Division gives full faith and credit to a surrender of parental rights executed in any other state or foreign country, if the procedures for the surrender of parental rights complied with that state's or country's applicable statutes and regulations, and was taken more than 72 hours after the birth of the child (N.J.A.C. 10:133J-3.3).

The Adoption Worker obtains written documentation of the surrender for review by the DAG assigned to the Local Office and for filing in the child's case record.